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January 24, 1983

Stephen Taylor, Commissioner
Department of Agriculture
Park Plaza
85 Manchester Street
Concord, NH 03301

Dear Commissioner Taylor:

In your position as a member of the New Hampshire State Conservation Committee you have requested our opinion whether the Committee, conservation districts, and conservation district officials and employees are entitled to obtain legal counsel from the Office of the Attorney General.

Briefly stated, our response in regard to the Committee is "yes" and as to the conservation districts and their officials and employees "no".

RSA 7:8 provides that the Office of the Attorney General shall:

When requested, advise any state board, commission, agent or officer as to questions of law relating to the performance of their official duties...

RSA 7:8 (emphasis added).



In addition, RSA 99-D:2 (Supp. 1983) provides that the following individuals, when involved in civil litigation arising from their official duties, may be eligible for representation by the office of the Attorney General:

... officer[s], trustee[s], official[s] or employee[s] of the state or any agency thereof, including members of the New Hampshire national guard and any justice of the district, municipal, probate, superior or supreme court, or the clerks thereof, or any harbor master appointed by the New Hampshire port authority...

RSA 99-D:2 (Supp. 1983) (emphasis added).

The New Hampshire legislature established the State Conservation Committee "to serve as an agency of the State". RSA 430-B:3. The Committee consists of nine members: "the director of the state cooperative extension services, the director of the state agricultural experiment station, the state commissioner of agriculture, the commissioner of the department of resources and economic development and five appointed members all of whom [are conservation] district supervisors or former [conservation] district supervisors". RSA 430-B-3.

The Committee is authorized to adopt rules and regulations necessary for the the supervision of conservation districts and the execution of its other statutory duties. RSA 430-B:3; see RSA 430-B-1, RSA 430-B:4; see also RSA 541-A:1, II ("agency" defined as any state board, commission, department, institution or other group authorized by law to make rules). In addition, the Committee "within the limits of [its] appropriation may employ such employees as it requires and fix their compensation subject to the rules ... of the [State] department of personnel." RSA 430-B:3 (emphasis added). Consistent with this provision the legislative budget for fiscal years 1984-1985 includes an appropriation specifically for the purpose of compensating temporary (class 50) Commission employees. 1983 Laws, Ch. 469, p. 50. These statutory provisions make clear that the State Conservation Committee is an agency of the State which is staffed by State officers and employees. Accordingly, the Committee, and its officers and employees are eligible for representation by the Office of the Attorney General pursuant to RSA 7:8 and RSA 99-D:2. See Opinion of the Justices, 110 N.H. 20 (1969).

RSA 430-B by incorporating each of the ten counties into a conservation district also established ten county conservation districts. RSA 430-B:5. In so doing, the legislature

expressly declared these districts to be "governmental subdivisions of this state and public bodies corporate and politic". RSA 430-B:5, (emphasis added). Each district is governed by five district supervisors appointed by the State Conservation Committee. RSA 430-B:6. Pursuant to RSA 430-B:8 district supervisors are empowered to appoint associate supervisors and "employ such employees as they may require and determine their qualifications, duties and compensation". RSA 430-B:8, see also RSA 430-B:9.

In contrast to the State Conservation Committee, however, the conservation districts in employing staff are neither limited to a particular legislative appropriation nor required to comply with State personnel rules. Compare RSA 430-B:3 with RSA 430-B:8; see RSA 98. This statutory distinction makes clear that the legislature did not intend conservation district employees to be state employees. Id. Indeed, the only mention of funding of conservation districts contained in RSA 430-B is a provision authorizing conservation districts to accept donations from the United States or the "State [of New Hampshire] and any of its agencies". RSA 430-B:9, IX (emphasis added). In this regard it is also significant that the 1984-1985 legislative budget does not contain an appropriation for the employment of these employees but, consistent with RSA 430-B:9, IX, instead only provides funding for grants to be made by the Committee to the conservation districts. 1983 Laws, Ch. 469 (p. 50).

For the foregoing reasons, as the conservation districts created pursuant to RSA 430-B are governmental subdivisions of the State and not state agencies, they and their officers and employees are not entitled to representation by the Office of the Attorney General pursuant to RSA 7:8 or RSA 99-D.

I trust this has been responsive to your inquiry. Feel free to contact me if you have any further questions.

Very truly yours,

Peter T. Foley for

Peter T. Foley
Assistant Attorney General
Division of Legal Counsel

PTF/gla

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